

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

RANDALL K. CALVERT, for himself)	
and all others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. <u>CIV-12-977-M</u>
)	
A LA MODE, INC., a/k/a A LA MODE)	(Removed from Case No. CJ-2012-5372
TECHNOLOGIES, a Florida corporation,)	District Court of Oklahoma County, OK)
)	
Defendant.)	

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Pursuant to 28 U.S.C. §§ 1331 and 1441, Defendant a la mode technologies, inc. f/k/a a la mode, inc. ("ALM") hereby removes the state court action from the Oklahoma County District Court where it was filed in Cause No. CJ-2012-5372 and styled *Randall K. Calvert, for himself and all others similarly situated v. a la mode, inc. a/k/a a la mode technologies*, to the United States District Court for the Western District of Oklahoma. As grounds for removal, Defendant states as follows:

1. Plaintiff Randall K. Calvert filed his Class Action Petition (the "Petition") on August 23, 2012 in the Oklahoma County District Court (the "State Court Action") which is located within the Western District of Oklahoma.
2. The Summons and Class Action Petition were served on Defendant via certified mail on August 23, 2012 and received by Defendant on August 24, 2012.

3. As required by 28 U.S.C. § 1446(b), this Notice of Removal is filed with this Court within 30 days of service of the Petition on Defendant.

4. Pursuant to 28 U.S.C. § 1446(a), certified copies of all process, pleadings, and orders served upon or filed by Defendant in the State Court Action are collectively attached as Exhibit 1 and incorporated herein by reference. Further, pursuant to Local Rule 81.2, attached as Exhibit 2 is a certified copy of the State Court docket sheet.

5. As set forth below, this is a civil action over which this Court has federal question jurisdiction under the provisions of 28 U.S.C. § 1331. Therefore, the action may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441. Civil Cover Sheet, attached as Exhibit 3.

6. Plaintiff's sole cause of action in his Petition are for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227. Petition, ¶¶ 3, 9. The U.S. Supreme Court has noted that "TCPA liability thus depends on violation of a federal statutory requirement or an FCC regulation . . . not on violation of any state substantive law." See *Mims v. Arrow Financial Svcs.*, 132 S. Ct. 740, 751; 181 L. Ed. 2d 881, 896 (2012). Claims under this statute arise under the laws of the United States that creates the cause of action and therefore, "federal and state courts have concurrent jurisdiction over private suits arising under the TCPA." See *Mims* at 745. The U.S. Supreme Court has determined that nothing within the "text, structure, purpose or legislative history of the TCPA calls for displacement of the federal question jurisdiction U.S. district courts ordinarily have under 28 U.S.C. § 1331." *Mims* at 753. Plaintiff's claims are therefore removable to federal court.

7. Plaintiff has requested a jury trial.

8. A copy of this Notice of Removal is being served upon Plaintiff through his attorney of record and upon the Clerk of the Oklahoma County District Court, as provided by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant a la mode technologies, inc. f/k/a a la mode, inc. requests that this Court assume jurisdiction over this controversy and that this matter proceed in the United States District Court.

Respectfully submitted,

/s/ Ryan S. Wilson

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2012 a true and correct copy of the above and foregoing was sent via e-mail and via regular mail, postage prepaid thereon, to:

Randall K. Calvert
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ATTORNEYS FOR PLAINTIFF

/s/ Ryan S. Wilson